

## MINUTES

### WARRICK COUNTY AREA PLAN COMMISSION

Regular meeting held in Commissioners Meeting Room,  
Third Floor, Historic Court House,  
Boonville, IN  
Monday, July 8, 2013, 6:00 PM

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President; Jeff Valiant, Amanda Mosiman, Brad Overton and Jeff Willis.

Also present was Morrie Doll, Attorney; Sherri Rector, Executive Director, Molly MacGregor, and Jamie Key, Staff.

**MEMBERS ABSENT:** Mike Moesner and Richard Reid.

**MINUTES:** Upon a motion made by Amanda Mosiman and seconded by Jeff Willis, the Minutes of the last regular meeting held June 10, 2013, were approved as circulated.

The Chairman explained the Rules of Procedure to the audience and stated any rezoning receiving a recommendation this evening will be forwarded to the County Commissioners on August 12, 2013, at 4:00 PM, in this the Commissioners Meeting Room.

### **REZONING PETITION:**

**PC-R-13-05A- Petition of June Barron** to rezone 0.495 acres located on the W side of Epworth Rd approximately 1000' N of the intersection formed by Stahl Rd.(S 375) & Epworth Rd.(W 1050), Ohio Twp. from "C-1" Neighborhood Commercial to "R-1A" One Family Dwelling. (Complete legal on file.) *Advertised in The Standard June 27, 2013.*

June Barron and Nicholas Barron were present.

The President called for a staff report.

Mrs. Rector stated they have all return receipts of certified mail from adjacent property owners. She said the petitioner is requesting to rezone 0.495 acres from "C-1" Neighborhood Commercial Zoning to "R-1A" Single Family Dwelling. She stated the minimum lot size is 9,000 square feet and the comprehensive plan predicts the area to be agriculture. She said the existing land use is a single family dwelling and all surrounding properties are "A" Agriculture Zoning districts. She said there is 500 year flood plain which does not require any special certifications. Mrs. Rector stated the entrance is off of Epworth Road and the stated use is residential with a single family dwelling. She said the property was rezoned by the mother several years ago for a business and now her son is trying to obtain a loan to purchase the

property but the bank will not approve it unless it is rezoned back to residential, or unless he took out a commercial loan.

The President asked the applicants if they had anything to add to the staff report.

They did not.

Amanda Mosiman asked if all the surrounding property was zoned agriculture.

Mrs. Rector said they are two lots down from Colonial, so they are getting into commercial zoning.

Ascertaining no comments from the Board and being no remonstrators present, the President called for a motion.

Brad Overton made a motion based on the evidence presented and petition on file to recommend approval of PC-R-13-05A to the County Commissioners. The motion was seconded by Jeff Valiant and unanimously carried.

**PC-R-13-06- Petition of Ray G. & Lisa Hall** to rezone 1.0 acre located on the W side of Bell Rd. approximately 0' W of the intersection formed by Nester Hill Rd. & Bell Rd.(W 850), Ohio Twp. from "A" Agriculture to "R-1" One Family Dwelling. (Complete legal on file.) *Advertised in The Standard June 27, 2013.*

Bill Bivins was present.

Mrs. Rector stated they have all return receipts from certified mail except for two from Joyce R. Negley and Bob & Mary Etta Yancey. She stated they are requesting to rezone 1.0 acre from "A" Agricultural Zoning to "R-1" Single Family Dwelling Zoning. She said the minimum lot size is 6,000 square feet. She said the Comprehensive Plan projects the area to be residential. She said the existing land use is single family dwelling. Mrs. Rector stated the property to the north and east are zoned agricultural and the properties to the west and south are zoned "R-1A" One Family Dwelling. She said there is no flood plain and there are two entrances, one off Bell Road and one off Nester Hill Road. She said the stated use for the property is residential which is allowed. She stated the applicant is rezoning in order to subdivide the lot into 3 lots. She said the Agricultural Zoning has a minimum lot size of ½ acre with a minimum width of 100 feet at the building line. She said there is not enough land to do that on this lot. She said the minimum requirements with the "R-1" zoning are 6,000 square feet with a 60 foot minimum width at the building line, which would allow the applicant to subdivide his lot into 3 pieces. Mrs. Rector added they have a copy of the proposed plat which will require a major subdivision with the residential zoning; it will be looked at for street improvements, drainage, and all that.

Brad Overton asked if there is something that wasn't allowed.

The President said with the agriculture zoning he would have to stay one lot, but he could have three lots with the rezoning.

The President asked if there were any questions by the Board members.

Bill Bivins stated that the proposed subdivision will have about 75 feet of road frontage and about 9,800 square feet versus the 6,000 minimum, so these lots will be larger than the minimum requirements.

Ascertaining no questions from Board members and being no remonstrators present, the President called for a motion.

Jeff Valiant made a motion based on the evidence presented and petition on file to recommend approval of PC-R-13-06 to the County Commissioners. The motion was seconded by Brad Overton and unanimously carried.

### **AMENDING ORDINANCE TO THE COMPREHENSIVE ZONING ORDINANCE:**

AN ORDINANCE TO AMEND ARTICLE XX(A) SOLID WASTE DISPOSAL FACILITY “M-3” DISTRICT SUBSECTION 8 NON CHANGING OR USAGE, ABANDONMENT AND EXPIRATION OF THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in The Standard June 27, 2013.*

The purpose of this ordinance is to establish a reversion of zoning upon change of usage, abandonment, expiration or ownership.

The President called for a staff report.

Mrs. Rector stated this is the ordinance we talked about advertising at the last Planning Commission meeting. She said we have had this in the ordinance before and when it was redone in 2005 it was left out, so she went back and added in what was in the previous ordinance except she did put property changes ownership and/or applicant. She said basically if it ceases it reverts back to its original zoning. She said “M-3” requires plans anyway.

The President asked if there was anybody present that wanted to speak on behalf of this ordinance.

There were none.

Brad Overton made a motion to recommend approval to the County Commissioners of the amending ordinance. The motion was seconded by Jeff Valiant and unanimously approved.

**OTHER BUSINESS:**

**Formal Complaint** ~ Wendall and Nancy West ~ 2722 Walnut Lane ~ OWNER OF RECORD: Wendall and Nancy West~ Junk Salvage Yard in an “A” Agriculture zoning district. Cease and Desist Notice and Notice to Appear sent on March 27, 2013. *On April 8, 2013, were given 30 days to bring property into compliance and 60 days to remove mobile home. Granted an additional 30 days on May 13, 2013 and again on June 10, 2013.*

Nancy West was present.

The President called for a staff report.

Mrs. Rector said the Board should be familiar with this property. She said Guy Gentry went out to the property this morning to take pictures and they all have the new pictures in their packets.

Guy Gentry said they built a block wall in front of where the storage area was at, and it actually looks better than the picture.

Mrs. Rector said it looks nice to her.

Guy Gentry said it looks cleaned up really well.

Brad Overton asked if the trailer was still there.

Guy Gentry said it is gone.

Brad Overton asked if there was something about a tree and a frame back there.

Guy Gentry said that it is all gone.

Ascertaining no questions from the Board, and being no remonstrators present, Guy Gentry made a motion to approve that Mrs. West is no longer in violation.

The motion was seconded by Jeff Valiant and unanimously carried.

**Formal Complaint** ~ Frank Schnell dba FIT Tire Recycling, OWNER OF RECORD: J.H. Service Co., Inc., by Ronald Witt, Sr., Pres. ~ Tire storage

The President called for a staff report.

Mrs. Rector stated that Guy Gentry went there this morning and the pictures are in their packets. She said today in the mail she received a letter, dated July 3<sup>rd</sup>, from Nancy Johnston with IDEM, stating that it has been determined that F.I.T. Tire Recycling & Removal has achieved compliance with the terms of the agreed order issued.

The President said it looked pretty good at the last meeting. He asked if anyone was there to speak about F.I.T. Tire, being none and ascertaining no questions from the Board, he called for a motion.

Brad Overton made a motion to approve that F.I.T. Tire is no longer in violation. The motion was seconded by Amanda Mosiman and unanimously carried.

**Formal Complaint** ~ Chester & Norma Higdon ~ 4541 Marble Court, Newburgh IN ~ Alleged unattached accessory building too close to property line.

Chris Wischer was present representing Mr. and Mrs. Higdon.

The President called for a staff report.

Mrs. Rector stated there was a complaint filed on June 19<sup>th</sup> against this property stating *Our neighbors at 4541 Marble Ct. has built a large structure too close to the property line of 4591 Marble Ct. We believe it is not 3 feet off the property line.* She said Dennis Lockhart made a visit to this address on June 25<sup>th</sup> and said *I took pictures of property lines and measurements from the building to the stakes. The building is 3 feet from property lines. These lines are estimated lines.* Mrs. Rector said the Higdons came into the Planning Commission and obtained an improvement location permit, you have a copy of the plot plan, on April 23<sup>rd</sup> of this year. She said as you can see the unattached accessory building is cocked away from the property line, it doesn't run with the property line, and that is what was submitted to us. She added that any unattached accessory building has to be at least 3 feet off of the side and rear property line. She said however, when the building was being built, it wasn't built like it was supposed to be. She said there are pictures in their packets that show it was built straight along the property line and not cocked as the improvement location permit stated. Mrs. Rector said she explained to Mr. Nellum who filed the complaint, that the Planning Commission does not have the ability to establish property lines; we are not surveyors and that would have to be done by a private surveyor. She said she asked Morrie, our attorney, what action she should take because of the fact it's not matching the improvement location permit that we issued. She said we were not going to determine the property lines but they needed to change their improvement location permit. She stated in the meantime, the Higdons hired Morley & Associates and they turned in a certified survey today of the property. She said the back corner of the structure is 3.33 feet off of the property line, the front corner is 2.66 feet from the property line, and therefore they are 4.08 inches too close to the property line. She also said the back corner encroaches into a RPUE which is a restricted public utility easement which means Newburgh Sewer. She added that Attorney Wischer is here today representing the property owners. She said the only way they could come into compliance without moving this building is to file for a Variance and go before

the Board of Zoning Appeals to allow them to be 4 inches too close to the property line and they would have to get an okay with Newburgh Sewer for it to be encroaching into the sewer easement. Mrs. Rector said the Board of Zoning Appeals would have to approve it; otherwise it has to be removed. She added that they do not have to approve the variance.

Attorney Doll said approving a variance that is self-created is a problem with the Supreme Court of Indiana.

Mrs. Rector said unless they had done the survey, she has to take anybody's word for it that the building is three feet off. She said she cannot say that it doesn't look like it to her. She said they have to take the applicants word for it, because they have no way of knowing it. Mrs. Rector said but now we know. She said she was ready to write them a letter and tell them to amend their improvement location permit plot plan. Mrs. Rector asked Attorney Doll if he thought they could apply for the variance.

Attorney Doll said anybody could apply for a variance but that doesn't mean it will be approved, that is up to the BZA.

Attorney Chris Wischer said the original plan was to build the building parallel with the utility easement, the RPUE. He said when they were constructing the building; apparently some of the utilities run through the property across where the "L" shape comes out of that building. He said the way it was explained to him was that the builder, on his own initiative, turned the building to avoid the utilities, and doing them a favor to line it up with their driveway. He said in addition, another factor about the easement, the fence that is out there, they believed to be the easement line, turns out the fence is in the easement. He said the easement is closer to their house than what was believed. Attorney Wischer said it was the belief all along that the building was three feet. He said the building inspector estimated when he looked at it that it met the three foot requirement. He said the reason they had Morley go out was to verify that it was okay, and as it turns out we are four inches shy and that information has been provided. He said we are being up front and telling them what it is. He said he doesn't know whether any evidence has been presented by the complainants about it but it is what it is. He added that there may be a couple of things that we can do. He said they could move the building, they've considered removing part of the building, and that is something they have to look at, or see if it is possible to get a variance to get into compliance. Attorney Wischer said what they are asking for today is some time to get it figured out. He stated he believe the next opportunity to be heard by the BZA would be the end of August. He said he just found out today that they weren't three feet. He said he thought this was going to come in to their favor but that is not the case so they just need some time to look at it and figure out what they can do.

The President asked if there were any questions from the Board members.

Amanda Mosiman asked what the complainants were complaining about to begin with.

The President said that they were here and asked the complainants to step forward.

William and Mary Nellum approached the podium. Mr. Nellum said they are the property owners of 4591 Marble Court. He said they knew that the structure was too close to the property line. He said they also have a certified survey from U.S. Surveyors, and they agree with the building being 2.66 feet from the property line because his survey says 2.7 feet. He said they are talking about 4 inches here, but his question is, if he robs a bank for one dollar, it is still bank robbery. He said the building is not in compliance with the rules and regulations that exist in Warrick County. He said therefore, because it is not, and because of the size of the structure, it is way too large, it's not a garage. He said they obtained a permit to build a garage but this is a pole barn. He said if it's an unattached accessory building, the jolly green giant doesn't live in his neighborhood so whose putting a shovel or snow blower or lawnmower in this facility. He said they would like for the building to be disassembled because it's not in compliance with the 3 foot rule that exists for Warrick County. He said it's not right that they be allowed to break the law because they did not plan to build this project the way they should have. He said now the structure is up and it's complete, and it's not 3 feet from the line, but if you're going to build something like this you would certainly want to make sure that you are within the law during the initial construction as opposed as to letting it get to this point. Mr. Nellum added that it is an eyesore. He said if you look at the pictures, it is not a garage and there are no other structures in our subdivision of this size. He said he talked to Mr. Sterchi, and he told him that he did not give anyone permission to build anything because he was the developer. He said all the homes have been bought; he no longer has any ties to the subdivision. He said there is a covenant on file, and he asked Mr. Sterchi what you would call an unattached accessory building, he said whatever the rest of the neighbors have in the neighborhood, which we commonly know as yard barns. He said no one has anything like this in not only his subdivision, but he has been riding around Warrick County and he hasn't seen anything like this in any subdivision. He said therefore they would like to request that the building be disassembled.

Mr. Steve Henning approached the podium. He stated that he lives at 4521 Marble Court which is four houses down from where they built their pole barn. He said up to two weeks ago that pole barn was a garage. He said it plainly states in the covenant there can be one attached garage on a property, which they have. He added if they want to call this an accessory building, it has to be in conformity and harmony with their home. He said this thing is a monstrosity. He said the first time he noticed it going up his wife asked him what is going on down there and he told her it looked like somebody is building a pole barn, and that's exactly what it is. He said he doesn't know what the dimensions are; it may be about 20 by 20 feet tall. He said you can tell when you drive in the neighborhood you can see this thing and you can tell it does not belong there at all. He said it is a total violation of the covenant and he understands that they are on the far west side of the county, they are almost in Evansville, but it is the quickest growing part of the county that there is, and has been for several years, and nobody in that neighborhood wants that. He said

that is the only piece of property that they own in that whole subdivision, that it would even be possible to build something like that on because they have a side garage and their lot is shaped accordingly, it's on a curve. He said there is no other place in there that you could even attempt it. He said so he agrees that it needs to come down. He said they snuck around when they built this thing, they didn't ask any neighbors anything about it, they just started building it, they hired somebody to build it, now the thing is up and what are you going to do. He said they do not need it in their neighborhood and no other neighborhood like ours needs it either.

The President asked if there were any other remonstrators.

David Seitz approached the podium. He said he lives at 4580 Marble Drive, Mansfield Subdivision. He said when they first seen the pole barn being built, he went and talked to his attorney who sent them a letter to cease and desist. He said they ignored that. He added that he has gone around and talked to all of the neighbors who have signed petitions, and has several people in his area willing to give donations to help pay for attorney's fees to see what they can do about having this taken down. He said it is not in harmony with the subdivision. He added that every building in that subdivision is at least 80% brick, have 6/12 pitch roofs, which this does not have, it's a steel building probably about 20 by 40 foot, 20 to 25 feet tall, it's in the easements, it's too close to the property line and its facing Lincoln Avenue so that is the first thing that you see when you pull into the subdivision. He said it is a big pole barn and it does not fit the area and he wants the thing down. He said poor William, they look out their back door, or they try to sit on their back porch, and they look at a wooded tree line or a warehouse next to them. He said they are blocked in and he doesn't think it is fair.

Mrs. Rector said, as she has explained to the Nellums, we do not enforce private restrictions. She said a pole barn is a type of construction of which the Planning Commission also does not get into. She said as long as it meets the setbacks, the height, the size, and the uses allowed in that zoning then we issue them an improvement location permit. She added that the construction type of the brick, siding and all that, those have to be enforced by the property owners of the subdivision, their homeowners association, if there is not one, there needs to be one formed. She said Mr. Sterchi is no longer a part of it so he is not going to enforce the private restrictions any longer. Mrs. Rector said as far as the zoning regulations go the building meets all regulations, the height, the use of the building which they said was an accessory structure, which means a storage building, but it does not meet the set-back and it is in the easement.

Attorney Doll said anybody could apply for a variance, but he did not know what the BZA would do and he did not know what his advice would be concerning self-created issues.

Attorney Wischer said he appreciates that. He said at this point he would like to look into that, review the code, and advise them accordingly. He said he would like a chance to find a way to make them compliant or if they can't they will deal with it some other way.



Amanda Mosiman said they could still bring it into compliance; say they have to take it down, they could bring it into compliance with both violations, it is still allowed to be there. She said if it meets all recommendations, her opinion is that it has nice siding, they look like they take care of it, the color scheme matches, there is nothing wrong with it.

Attorney Wischer said their lawyer and another lawyer in his firm have traded correspondence and there is a disagreement that this is in violation of any covenant at all. He said there is a disagreement that is between the private property owners. He said if they have an opportunity to bring it into compliance and can, then they would be in compliance and this complaint would need to be addressed. He said if they can't then they will have to figure something else out but that's all they really want at this point is some time to figure this all out.

Mrs. Rector said basically the Board has to tell her to not to revoke their improvement location permit.

Attorney Doll said yes.

Mrs. Rector said and also give them time to file for a variance.

Attorney Doll asked if the building was finished.

Attorney Wischer said it is a finished building. He said he thought it was a substantial expense to build it, but maybe like he said, there are a couple of avenues to take to get it into compliance without taking the whole building down.

Attorney Doll said his recommendation to the Area Planning Commission would be to table the complaint until they have had an opportunity to appear before the Board of Zoning Appeals if necessary, or bring it into compliance in which they develop a new engineering report that now shows they are not 4 inches too close.

Mrs. Rector asked if this should be done by the next BZA meeting, which is at the end of August.

Attorney Doll said yes, and then it would go to the September APC meeting.

Attorney Wischer asked if on the easement issue he presumes they would need at a minimum an encroachment agreement from the utility, and if they get an encroachment agreement they would still need a variance. He said if he were to somehow get it vacated for that little piece that would eliminate the need for the variance because they would no longer have the easement. Those seem to be the two options.

Attorney Doll said if they fix the 4 inch problem and vacate a portion of the utility easement it doesn't require a variance, and then we don't have a Supreme Court issue.

The President asked if there were any additional comments.

Mr. Nellum approached the podium. He asked how it can be fixed if it is not disassembled. He said we are not saying that it is not a nice building; it is a beautiful building if you have two acres of property. He said they are saying it is not in conformity with the neighborhood.

Attorney Doll said they may have private nuisance rights or they may have restrictive covenant complaints. He said we don't get involved in that because we do not have any jurisdiction over either of those. He said your private remedies could be judicial or by negotiation and your restricted covenant violations, whether or not you believe this is a violation of your restricted covenant or not, he has not seen their restricted covenant, he has no opinion about that question, but we do not have any jurisdiction. He said our authority is created by the State Legislature and it deals only with authorizing Warrick County to enact the zoning ordinance and then to enact rules and regulations as to what is in compliance and what is not in compliance. He said and to possibly to create a system where when something that isn't in compliance might yet be allowed to exist under a process called a variance. He said so what has been asked for and what is reasonable under the circumstances, if the Board agrees, is to give the land owner a reasonable period of time to determine if there is corrective steps that can be taken to bring it so that it complies with the zoning ordinance, our responsibility, but that still doesn't answer his issue about whether or not that fits the neighborhood. He said that is something that we don't have jurisdiction over. He said that's an apple, this is an orange, we are dealing with oranges.

Mr. Nellum said okay; let's go back to the oranges. He said it's not 3 feet from the property line. He said we see that from the survey they had conducted from Morley and also from the certified survey we had done from US Surveyors. He said therefore, how can they make that into compliance with the 3 foot rule unless they disassemble it and move it over, or the only other way that he sees fit is that he sells them a piece of their property to make it legal, which they are not willing to do. He asked how can they take this building and make it legal when it is not.

Attorney Doll said until a proposal is brought forth to explain what they propose to do to bring it into a 3 foot set-back conformity, we'd be speculating on what they would or wouldn't do. He said all we are talking about doing is giving them approximately 2 months, until the September meeting of the Area Planning Commission, to determine if there is a solution to this problem that is legal. He said that is what has been asked for and that's what his recommendation as council to the Area Plan Commission is.

Guy Gentry stated however, in the meantime, that does not mean that Mr. Nellum can't continue on with their civil issues.

Mr. Nellum said he'd just as soon take a movie projector out there and watch movies off the side of it, it's that big. He said however, if they cannot bring it into compliance within the two months that they are giving them, what will be the next step that Warrick County will take.

Attorney Doll said there is another Board, and that Board is called the Board of Zoning Appeals, and that Board hears variance applications, where there is a problem with the use of a piece of property, and there is a procedure in Indiana Law that allows a property owner to ask for some relief from the zoning ordinance because of a problem. He added that it is not easily granted, there are all kinds of court decisions and rules and regulations, but they have a constitutional right, just as he does, to apply for a variance if they are inclined to do that, they have a property right. He said by continuing this until September, that gives them the option to do two things perhaps. He said number one is to propose a solution to the problem, a physical solution to the problem. He said that might be taking it down, that might be moving, that might be acquiring a piece of the right-of-way behind it. He said the other option they have is to ask for a variance by filing an application with the Board of Zoning Appeals, having a hearing on the fourth, at 6 p.m. in this room.

Guy Gentry added that all adjacent properties must be notified too.

Attorney Doll said it is a similar Board, but that is what will be occurring here, if the Board tables it.

Jeff Valiant asked if there was a homeowner association.

Mr. Nellum said they don't have a homeowners association but there is a covenant that has been on file since 2003.

Guy Gentry said usually in the covenant restrictions it states a time of how they form and elect presidents and all of that for when after the developer has left, and that probably needs to be done.

Mr. Nellum said they do not have a homeowners association because a lot of people don't want to be affiliated with fees. He said we have a neighborhood watch, Mr. Eric Holder is in charge of it, and it kind of has been acting as the homeowners association without having a homeowners association.

Mrs. Rector stated that she has read their covenant and they can form a homeowners association and it gave them the right, to at any time, any of the property owners could file a civil suit against anyone in the subdivision personally or together, against anyone in the neighborhood that is not in compliance. She said they could do it in civil court.

Mr. Nellum said they are not saying it is not a nice building, but it just doesn't fit where it's at, and there is nothing else like that in the neighborhood. He said he doesn't know if any of the Board members live in a subdivision, but he's sure they wouldn't be happy if they walked out their back patio and saw a 20 or 30 foot pole barn, especially when a person obtained a permit to build a garage. He said when they got the letter in the mail, now they want to call it an

unattached accessory building, but the original permit was issued for a garage, and that's not a garage. He said it is not for a regular car or snow blower, it's humongous, and thanked the Board for their time.

Jim Price approached the podium. He stated he lives at 4801 Overland Drive. He said his question is, in his subdivision they do have a covenant and are not likely to get a homeowners association, he knows there are a lot of subdivisions in the county which probably have covenants like this; so he wants to ask the Board to consider when individuals from subdivisions come to them and ask for some sort of variance for this or for that, to take a look at the covenant. He added that they are sort of standard, not well worded, and not put together too well. He said they benefit the developer more than anybody else while they are building buildings. He said what he sees is that the county will be facing an untold numbers of these kinds of disagreements that at least skirt around the issues of covenants.

Guy Gentry said we do. He said we have site reviews, plat reviews, and when they come in we tell the petitioner, they need to check their covenant and restrictions of their subdivision, but that is not our responsibility. He said our responsibility is the ordinance, and if it fits that then we issue the improvement location permit. He said we give them a heads up, that they may get sued, but that is really all we can legally do.

Jim Price said he understood.

Mrs. Rector said the subdivision she lives in, they have some good private restrictions. She said they are nice to have because they protect the neighbors. She said when you do form that, before any building can go up, they must get it approved by the home owners association before it can go up. She said so they have to form it, have a president, secretary, have meetings, etc. She said but a lot of people don't like them. She said they do not want to be told what to do with their property.

Guy Gentry stated that most of the time a home owners association cannot be formed until the developer is done developing his subdivision.

Amanda Mosiman made a motion to table the report until the September meeting, pending the BZA meeting, or other proposed changes.

Jeff Valiant seconded the motion and it was unanimously carried.

Attorney Wischer added that he believed that it had been implied that his client has been disingenuous with this body. He said whether they called it a garage or not in their permit, they said exactly how tall it was going to be. He said the only thing was they didn't build it exactly where they said it was going to be. He said his client has vehicles and a lift in there which is

why the height is necessary and so whether you call it a garage or an accessory building it is legal under the zoning code if we can get this set-back thing fixed.

**Formal Complaint** ~ Erskine & Lucile Asher ~ 712 E. Gough Ave, Boonville, IN ~ Junk Salvage yard in an “R-1A” One Family Dwelling zoning district. Cease and Desist Notice and Notice to Appear sent June 17, 2013.

Alan Asher was present.

The President called for a staff report.

Mrs. Rector stated that a complaint was filed against this property owner stating *Junk yard/ trash in yard. Abandoned vehicles*. She said on June 10<sup>th</sup> Dennis Lockhart, the inspector, went to the property and stated *The site is a mess. Junk cars, trash, and weeds throughout the property*. She said we sent a cease and desist letter to Mr. and Mrs. Asher informing them that they were in violation and were to appear at the meeting tonight. She said we also informed them that an inspection was to be done of their property within a week of the meeting. She said Dennis went back out to the property on July 5<sup>th</sup> to take pictures, he stated *I have visited this site and cannot see any changes*.

Alan Asher said he is working on the property. He said he has stuff bagged up and is trying to get time to haul it off. He stated there are health reasons; he has had two major surgeries in the last year. He said it is his property now, his mom passed away in February, and his dad passed away in 91. He said he is working on it, it takes him a little longer because of the heat, he can only do so much then he has to quit.

Guy Gentry asked how many vehicles he had on the property.

Alan Asher stated there is two in the back, one car that just needs plates on it, a truck that blew up on him in October that he is trying to find a motor for, a dually that he needs a couple of parts for, his mother’s car, and an expedition and a mustang which they drive. He said they bought the expedition because the truck blew up and he needed something to get his mom around because of her health and it’s getting ready to go up for sale.

Guy Gentry asked if that was his intent, to fix them up to sell.

Alan Asher said yes, to get rid of them. He added that it is a matter of money, and it does get expensive hauling stuff to the landfill when they want to charge you ten dollars for a mattress and five dollars for an old appliance. He said he understands there has to be something done there but sometimes you just have to wait for the money to get there.

Guy Gentry stated the truck looked like it had a load of trash in it, but that is the one that does not run, the white ford.

Alan Asher said that one is going to be sold. He said he is going to clean out the back of it and sell it. He said he has a guy that has wanted to buy it for a long time but his mom wanted to hang on to it.

Brad Overton stated the Taurus wagon looks like it has a bunch of stuff in it.

Alan Asher said yes, it does have a bunch of stuff in it but it is insured, it just needs plates on it. He said the bad thing about that place when he moved out of his house he didn't have enough room for everything so anything that wasn't moved there is in a storage facility. He added that it is just going to take him some time to get everything taken care of.

The President asked if there were any remonstrators for or against this.

There were none. The President asked Alan Asher how much time he anticipated it would take to get everything done.

Alan Asher said he did not know.

Guy Gentry asked if he worked outside.

Alan Asher said no, his business went under. He said about the time his health problems started, thanks to Docspots' program that the courts picked up he went out of business. He said he used to do background searches in criminal histories for appointment and had several clients but when they caught wind of Docspot where they can have somebody sit there on their computer and do it, then that put him out of business. He added that he is 55 years old, has had major heart surgery now, and it is kind of hard to find a job.

Guy Gentry asked the Board what they would like to do.

Amanda Mosiman asked when the complaint was filed.

Attorney Doll stated it was filed prior to June 10<sup>th</sup>.

Mrs. Rector said it was filed by the City of Boonville. She said they thought it was in town, somebody had filed with them and then they found that it is right on the county-city line. She said they then filed it with us.

Discussion ensued about the county-city line along Gough Avenue.

Mrs. Rector asked Alan Asher if the property was in his name.

Alan Asher said the new deed is in the recorder's office now, and is in the process. He said he is getting everything taken care of. He added that there have been several surprises since his mother had passed.

Brad Overton stated that since our last discussion about vehicles, they have determined that their assumptions about licensing, it is just being able to move them.

Attorney Doll stated it was operable, licensed, and insured.

Guy Gentry said it is just operable. He added that state statute says inoperable vehicles; they changed that about the license plates.

Mrs. Rector said that is what the sheriff had informed them. She said it is their responsibility if they are driving with no insurance or license plates.

Brad Overton said it looks like a lot of the trash is behind the mercury.

The Board agreed.

Alan Asher said he doesn't know how it got that bad. He said he has picked up some of the trash and mowed the grass.

Brad Overton asked if he has pulled something out of there because when he drove past there a while ago there looked like something was missing over on the right side.

Aland Asher said no, he had not moved anything big.

Brad Overton said the stuff behind the wagon looks to be what needs to go.

Alan Asher said part of that stuff is when they started cleaning the wagon out, the trash bags just sit there and that is as far as it got.

Guy Gentry said the quicker he can sell the other vehicles, it would give him a little cash to take care of the rest of the stuff.

Alan Asher said the problem with the dually sitting in the driveway; before they quit driving they had just put almost \$7,000 under the hood. He said it had blown up and they rebuilt it, and it's an 84 dually and it's not worth anything close to that and he is trying to get as much as possible out of it. He said two batteries and a starter is all it needs and that's around \$400 which is money that he doesn't have right now, he has other issues that have been more important.

Brad Overton asked about the thunderbird sitting behind the wagon.

Alan Asher said he has somebody that had wanted it for a derby car but he doesn't know what happened with that.

Jeff Willis said if Alan Asher has cars that he doesn't want and can't sell, a lot of the salvage companies will come pick up the cars and pay him.

Amanda Mosiman made a motion to table the complaint until the September APC meeting.

Jeff Valiant seconded the motion and it was unanimously carried.

### **ATTORNEY BUSINESS:**

#### **Warrick County Plan Commission v Donald G. Adams and Gotham Recovery, LLC ~ Court Agreement**

Attorney Doll stated the Adams violation was continued. He said it was set for a hearing on the 21<sup>st</sup> of June. He said Mr. Adams has hired council, Marco Delucio, and he proposed that he would be interested into entering into a stipulation and consent decree that the property would be brought into compliance and remain in compliance and no longer be in violation. He said they talked about it, he drafted a consent decree, sent it to them on the 24<sup>th</sup>, Marco indicated he would get it to his client but it would probably be the following week, July 1<sup>st</sup> before he would get back to them. Attorney Doll added that he has not heard anything. He said he emailed him to inform him that he would be bringing it up tonight for the Boards instructions, whether to give them additional time, or whether they want him to withdraw the consent decree and set it for a hearing in front of the court.

Mrs. Rector said Marco said he was on vacation and didn't get it done.

Attorney Doll said that Marco indicated it wasn't Mr. Adams fault, it was his fault. Attorney Doll said he wanted instructions either to give them until August or to withdraw the consent decree.

Amanda Mosiman asked if Marco had come to Attorney Doll asking for the consent decree.

Attorney Doll said yes.

Guy Gentry said they had talked about it and that keeps it out of court if they comply. He said they felt that was a better avenue rather than tying up and spending more county dollars that they don't have. He said he was going to cover the costs of Attorney Dolls fees to draft that.

Mrs. Rector stated there have not been any more complaints filed on it.

Guy Gentry and Amanda Mosiman stated they were okay with giving it more time.

Mrs. Rector said they could make it where if it is not signed by the August meeting then...

Attorney Doll said they told the court they would have it in ten days so at some point the court is going to start to complain, but he will pass it on.

### **EXECUTIVE DIRECTOR BUSINESS:**



Brad Overton asked what the conclusion to the administrative meeting was. He asked if the problem was the fact that we can't condemn a building, and the other part was we have abandoned buildings that we can't identify an owner to pursue action against.

Mrs. Rector added that another problem is that we do not have the money to fund it.

Attorney Doll said Indiana has an unsafe building statute that is crafted in a way that local units of government adopt the state statute as their local ordinance and then they have uniformity as to how this will work. He said the problem is, and Warrick County at one time had an ordinance, we don't have money to carry out the ordinance. He said if we adopt the ordinance and then we shirk our responsibility to tear down or condemn an unsafe building, then the county is in the path of liability exposure because we had an ordinance, we recognized the public duty, we failed to perform the public duty, and consequently someone has been harmed. He said so we would be in worse condition than we are.

Guy Gentry said so that is the reason we repealed it.

Mrs. Rector stated she did not know why the council turned it down.

Brad Overton said part of the issue is, they were throwing around \$20,000 or whatever, he doesn't think anybody has a clear idea of what kind of funding was needed. He said they said \$16,000 for Car Quest, and he doesn't know anything about the costs of doing demolition but he thought tearing down a single family house would not cost as much as a three story commercial building. He said he thought that would be what they should look at, what costs they are going to have and may want to exclude commercial buildings.

Attorney Doll said there are two or three things to consider. He said if you set an annual budget, not to be exceeding let's say \$20,000, and worst case scenario you only get four or five houses done, but that's five houses more than we are doing now.

Guy Gentry added that any additional ones would get put off until the next year.

Amanda Mosiman said there is still the liability while they are waiting on tax sale.

Attorney Doll said yes that's true. He said he doesn't think the Area Planning Commission is the proper agency to be tearing down houses. He said it should be the County Commissioners themselves, or the Building Inspector, but not in the Planning Commission. He said it is not in our statutory authority, we don't get that from the state legislature. He said he really doesn't think, if the council does this, don't give to us because he doesn't think legally we are the ones to be doing this.

Brad Overton said he can understand people's concerns with property value, and if they are paying property taxes and the value of the property is going down, there needs to be something. He said he thinks somewhere the county may have some interest in this.

Attorney Doll said the State thinks it's a public policy that local units of government have a duty to tear down dilapidated and unsafe buildings. He said so it is a public policy of Indiana that we would do this. He added that he is saying unless you are going to fund it don't enact it because you are in liability. He said if you do enact it, and you do fund it, don't give it to us because it is not in our bailiwick, it's not under our jurisdiction by state statute.

Brad Overton said that gets confusing because they bring these public nuisances to us.

Attorney Doll said junkyard, trash nuisance yes but unsafe building is not necessarily the same thing.

Amanda Mosiman said she knows of some counties where the building commission and area planning are the same person. She said she could see where that would get confusing in counties like that but here...

Mrs. Rector stated she read the unsafe building statute and it goes on and on. She said it is a process.

Attorney Doll said we need engineers to look at buildings and say it is an unsafe structure.

Brad Overton said so basically, lets say a kid wonders onto a property like that and gets hurt. He said as long as we are out of it with this ordinance we are out of it and whoever is the guardian of that property is responsible for it.

Attorney Doll said the homeowner is responsible for it. The owner of the unsafe property is responsible. He said it is called an attractive nuisance.

Brad Overton said even if it was abandoned.

Guy Gentry said somebody owns it. He said even with this other lady, she owns it, we have not been able to find her but it is not our responsibility to track them down.

Mrs. Rector said she did not know that they were passing that ordinance. She said they did that, a trash ordinance and a weed ordinance, all three of them at one time and she does not know what conversations on those were.

The President asked if anybody else had anything to discuss with the Planning Commission, seeing none he asked for a motion to adjourn the meeting.

Jeff Valiant made a motion to adjourn the meeting. The motion was seconded by Amanda Mosiman and unanimously carried.

Being no other business the meeting adjourned at 7:23 p.m.

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Guy Gentry, President

ATTEST:

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Sherri Rector, Executive Director